

MARVIN MCELROY, C73869
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VRW
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NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

E-filing

VRW

CV 08 2936

Case No. _____

COMPLAINT UNDER THE
CIVIL RIGHTS ACT

42 USC §1983 AND

DEMAND FOR JURY TRIAL

MARVIN MCELROY
Plaintiff

v

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION, et al.;
WILLIAM GAUSEWITZ, DIRECTOR OF CDCR;
AVENAL STATE PRISON, et al.;
JAMES HARTLEY, WARDEN OF ASP;
D. ARLINE; J. BOSTON; G. SIMON; M. NERI;
D. JACKSON; CLOS HARRIS AND ROCHA,
Defendants.

(PR)

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MARVIN McELROY, C73869
AVENAL SP
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MARVIN McELROY,
Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION et al,
WILLIAM GAUSEWITZ, DIR. OF CORRECTION;
AVENAL STATE PRISON (ASP) et al,
J.D. HARTLEY (A) WARDEN OF ASP;
D.ARLINE CAPTAIN OF ASP; LT J. ROSTON;
SGT. G. SIMON; C/O T. DEEGAN; C/O D.
JACKSON; C/O M. NERI; C/O HARRIS; C/O
ROCHA.

Defendants

Case No. _____
COMPLAINT UNDER THE CIVIL
RIGHTS ACT 42 USC § 1983 AND
DEMAND FOR JURY TRIAL

I. JURISDICTION

1. THIS IS A CIVIL ACTION AUTHORIZED BY 42 USC § 1983 TO REDRESS
THE DEPRIVATION, UNDER THE COLOR OF STATE LAW, OF THE RIGHTS SECURED
BY THE CONSTITUTION OF THE UNITED STATES.

2. THIS COURT HAS JURISDICTION OVER PLAINTIFF'S FEDERAL CLAIMS
UNDER 28 USC §§ 1331 and 1343(a)(3).

3. PLAINTIFF SEEK DECLARATORY RELIEF PURSUANT TO 28 U.S.C. §§ 2201 and 2202

4. PLAINTIFF'S CLAIM FOR INJUNCTIVE RELIEF ARE AUTHORIZED BY 28 U.S.C. §§ 2283 and 2284 and RULE 65 OF THE FEDERAL RULES OF CIVIL PROCEDURE

5. THIS COURT ALSO HAS JURISDICTION OVER PLAINTIFF'S STATE LAW CLAIMS UNDER 28 U.S.C. § 1367.

II VENUE

6. THE NORTHERN DISTRICT OF CALIFORNIA IS AN APPROPRIATE VENUE UNDER 28 U.S.C. § 1391(b)(1) ~~BECAUSE~~ THE DIRECTOR OF CDCR IS IN NORTHERN CALIFORNIA.

III ADMINISTRATIVE REMEDIES

7. PLAINTIFF HAS FILED SEVERAL INMATE APPEALS IN REGARD TO THE MATTERS MENTIONED HEREIN THIS COMPLAINT, THAT HAVE GONE UNANSWERED; AND FURTHER DELAY WILL MORE THAN LIKELY CAUSE PLAINTIFF TO CONTINUE TO SUFFER FURTHER HARM.

PLAINTIFF FURTHER CONTENDS THAT PRESSING THE ISSUE WILL ONLY INSURE FURTHER RETALIATION. ANGRY PRISON OFFICIALS CAN GET AWAY WITH ALOT.

IV PARTIES

A. PLAINTIFF

8. PLAINTIFF, MARVIN M'ELROY, CDCR# C-73869, IS/WAS AT ALL TIMES MENTIONED HEREIN IS/WAS A PRISONER OF THE STATE OF CALIFORNIA IN THE CUSTODY OF THE CDCR, AND IS CURRENTLY CONFINED AT ASP.

B. DEFENDANT(S)

9. DEFENDANT, WILLIAM GAUSEWITZ IS THE DIRECTOR OF CDCR. HE IS LEGALLY RESPONSIBLE FOR THE OVERALL OPERATION OF THE DEPARTMENT AND EACH INSTITUTION UNDER ITS JURISDICTION INCLUDING ASP WHERE M'ELROY IS CONFINED. HE IS THE FINAL POLICY MAKER OF CDCR.

10. DEFENDANT, JAMES D. HARTLEY, IS THE WARDEN OF ASP. HE IS ASP'S FINAL POLICY MAKER WHO IS LEGALLY RESPONSIBLE FOR THE OPERATION OF ASP AND FOR THE WELFARE OF EACH INMATE AT ASP.

11. DEFENDANT, D. ARLINE, IS THE CAPTAIN OF ASP'S FACILITY THREE. HE IS POLICY MAKER WHO IS LEGALLY RESPONSIBLE FOR THE OPERATION OF ASP AND FOR THE WELFARE OF EACH INMATE AT ASP.

12. DEFENDANT LIETENANT J. BOSTON (BADGE # 53827) IS A SUPERVISORY WHO IS RESPONSIBLE FOR THE OPERATION OF ASP AND FOR THE WELFARE OF EACH INMATE AT ASP.

13. DEFENDANT SGT G. SIMON (BADGE # 60967) IS A SUPERVISORY OFFICIAL WHO IS RESPONSIBLE FOR THE OPERATION OF ASP AND FOR THE WELFARE OF EACH INMATE, AT ASP.

14. DEFENDANT(S) C/Os T. DEEGAN (BADGE # 51852), D. JACKSON (BADGE # 73774), M. NERI (BADGE # 63395), HARRIS AND ROCHA ARE PROPERLY TRAINED CORRECTIONAL OFFICERS WHO RESPONSIBLE FOR THE SAFE CUSTODY OF THE INMATES CONFINED IN THE INSTITUTION OF THE DEPARTMENT OF CORRECTIONS AND REHABILITATION.

15. EACH DEFENDANT, IS SOED IN THEIR INDIVIDUAL AND IN THEIR OFFICIAL CAPACITIES.

16. AT ALL TIMES MENTIONED HEREIN THIS COMPLAINT THE DEFENDANTS HAVE AND CONTINUE TO ACT UNDER THE COLOR OF STATE LAW.

II STATEMENT OF FACTS

17. AT ALL TIMES MENTIONED HEREIN THIS COMPLAINT THE PLAINTIFF, MARVIN M'ELROY, CDCR # C-73869 IS AND OR WAS AN INMATE IN THE CARE, THE CUSTODY, THE SAFEKEEPING AND CONTROL OF CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION'S OFFICIALS, STAFF/PERSONNEL WHILE INCARCERATED AT AVENAL STATE PRISON.

18. The Plaintiff, MARVIN McELROY, was TRANSFERRED FROM DAVIS TO MCSF JULY 29, 1993 AFTER PRISON AUTHORITIES LEARNED OF A THREAT TO MARVIN'S LIFE, BECAUSE HE CAME TO THE ASSISTANCE OF LIEUTENANT GIDTONINI WHILE HE WAS UNDER ATTACK FROM ANOTHER INMATE, ON JULY 6, 1993. ON SEPTEMBER 2, 1993, WARDEN IVALEE HENRY GAVE MR McELROY A LETTER OF COMMENDATION FOR HIS SUCCESS IN CURTAILING THE STAFF ASSAULT, AT WHICH TIME HE WAS FURTHER ENDORSED AND RETAINED IN SNY DUE TO ONGOING ENEMY CONCERNS.

MR McELROY HAS BEEN INCARCERATED NOW OVER 26 YEARS, AND HAD ONLY RECEIVED TWO WRITE-UPS PRIOR TO BEING TRANSFERRED TO ASP IN NOV.'07, THAT TOOK PLACE INSPITE OF AN EXPIRED GYM EXCLUSION CHRONO, FOR MENTAL CONDITION, THAT PRISON OFFICIALS FAILED TO RENEW, EVEN THOUGH THE ISSUE HAD BEEN RAISED, WITH MR DLSON HIS PSYCHE CASE WORKER AT MULE CREEK.

SINCE MR McELROYS ARRIVAL AT ASP, HIS REQUEST TO DR. OLSEN FOR REEVALUATION OF PLACEMENT AT ASP, AND TO HAVE THE GYM EXCLUSION CHRONO REINSTATED HAVE GONE IGNORED, HE HAS ALSO BEEN ASSAULTED BY TWO INMATES, THAT CUSTODY OFFICERS HARRIS AND ROCHA ALLOWED TO ESCAPE AFTER BRAKING MARVIN'S WRIST, AND LATER OFFICERS JACKSON AND NERI DRAGGED HIM KICKING, SCREAMING AND YELLING, BY MARVIN'S BROKEN WRIST AND ELBOWS IN HANDCUFFS ACROSS THE INSTITUTION BACK TO THE YARD, WHILE DISREGARDING HIS ENEMY CONCERNS OF THE ONES THAT GOT AWAY.

AS A RESULT OF THIS CHAIN OF EVENTS, MARVIN NOW SUFFERS A LOSS OF MOBILITY IN HIS RIGHT HAND AND WRIST, POST TRAUMATIC STRESS DISORDER AND HAS SUBSEQUENTLY BEEN PLACED IN THE ENHANCED OUTPATIENT (EOP) PROGRAM AT AVENAL STATE PRISON.

A. EXCESSIVE USE OF FORCE

19. MARCH 14, 2008 ABOUT 14:45 HRS IN CELL #1 OF THE OUT-PATIENT HOUSING UNIT (OHU), MR. MCELROY SAT REMEMBERING C/O LOPEZ'S LECTURE FOR ORIENTATION THE DAY HE ARRIVED (NOV. 21, 2007), WHEN SHE CAUTIONED INMATES TO STAY OUT OF TROUBLE BECAUSE ASP ONLY HAS TWO SUN YARDS, SO INMATES CAN'T TRANSFER TO/ FROM ONE YARD TO THE OTHER TO GET AWAY FROM ENEMIES OR GAMBLEING DEBTS BECAUSE KITCHEN WORKERS FROM BOTH YARDS INTERMINGLE AND DO FAVORS FOR EACH OTHER.

SO WHEN DEFENDANT DEEGAN TOLD MR. MCELROY THEY WERE REHOUSING HIM ON THE 3 YARD (/FA3) HE IMMEDIATELY FEARED FOR HIS LIFE AND SAFETY, CAUSE HE IS NO LONGER ^{ABLE} TO DEFEND HIS^{SELF} DUE TO A BROKEN WRIST, FROM A FIGHT ON 4 YARD THAT DEFENDANTS HARRIS AND ROCHA OF ASP-HU420 ON JANUARY 26, 2008, LET MR. MCELROYS ATTACKERS FLEE; AND THEY HAVE NOT YET BEEN IDENTIFIED (SEE RVR F4-08-01-044 [EXHIBIT 'H'] / MARVIN MCELROY DECLARATION #2) (SEE ALSO UPSHAW DECLARATION)

MR. MCELROY THEN ATTEMPTED TO CONVEY HIS FEARS AND SAFETY/ENEMY CONCERNS TO DEFENDANT DEEGAN, AND SHOWED HIM THE PINS IN HIS RIGHT WRIST, TO HOLD IT TOGETHER AND THAT HE WAS DEFENSELESS (SEE EXHIBIT A, INCIDENT REPORT # ASP-FA3-08-03-0070, PG 184 AT Ln. 12 [T. DEEGAN]).

AFTER FURTHER DISAGREEMENT DEEGAN CALLED DEFENDANT, LT. BOSTON WHO TOLD HIM TO WAIT FOR DEFENDANT SGT G. SIMON; BUT DEEGAN TRIED TO FURTHER CONVINCE MR. MCELROY THAT IF WENT TO FA3-PROGRAM OFFICE HE COULD "VOICE" HIS CONCERNS THERE. MR. MCELROY CONTINUED TO REFUSE, AND THEN SHOWED HIM AGAIN.

DEFENDANT SIMON ARRIVED AT OHU CELL #1 AND OBSERVED DEEGAN "TRYING TO CONVINCE" MR. MCELROY TO GO TO FA3, WITH NO RESPONSE. AFTER SPEAKING WITH DEFENDANT BOSTON, THE DEFENDANTS RETURNED TO THE CELL AND INFORMED MR. MCELROY OF THEIR ORDERS TO ASSEMBLE AN EXTRACTION TEAM TO REMOVE HIM FROM THE CELL. MR. MCELROY THEN LAYED DOWN AND "HUGGED THE SEAT" AND TOLD THE DEFENDANTS "NO, NO PLEASE DON'T".

1 "INMATE M'ELROY", DEEGAN STATES "APPEARED TO BE IN AN ALTERED STATE OF MIND BY
 2 THE VISIBLE SHIVERING OF HIS BODY, THE MORE PRONOUNCED VEINS..." Id at Pg 384;
 3 THE DEFENDANT ORDERED MR M'ELROY "TO RELEASE" HIS GRIP FROM THE BENCH, WITH
 4 NO RESULTS. WHILE PULLING OUT HIS PEPPER SPRAY, HE GRABBED AND JERKED MR.
 5 M'ELROY'S INJURED RIGHT ARM. M'ELROY IN PAIN LOUDLY YELLED "NO!", TRYING TO EASE
 6 THE PAIN DEEGAN WAS CAUSING, HE LEANED TOWARD DEEGAN AS HE JERKED HIS ARM,
 7 THE DEFENDANT PEPPER SPRAYED MR M'ELROY. HIS SKIN AND EYE SHOT AND BURNING. MR.
 8 M'ELROY LET OUT A SCREAMING CRY FOR HELP AS SNOT POURED UNCONTROLLABLY FROM
 9 HIS NOSE. THE DEFENDANT INCITING ORDERED MR M'ELROY TO LET GO AND JUST
 10 TO "DO AS YOUR TOLD". HOWEVER NOW BLIND, IN SHOCK GASPING FOR AIR AND COMPLETELY
 11 OVERWHELMED WITH FEAR AND EXHAUSTION MARVIN HELD ON FOR HIS LIFE SHIVERING WITH
 12 TERROR, NOT ~~ANYTHING~~ SAYING ANYTHING JUST LISTENING TO THE GURGLE OF WHAT
 13 HE BELIEVE WOULD SOON BE HIS FINAL BREATH; AT THE WHILE DEFENDANT SIMON STOOD
 14 WATCHING AS HE TALK WITH BOSTON. IN BETWEEN MARVIN'S CRIES, ON THE PHONE (SEE EXHIBIT
 15 B, INCIDENT REPORT #ASP-FA3-08-03-0070 [G. SIMON]; SEE ALSO EXHIBIT A, INCIDENT REPORT Id.)
 16 20. OFFICER LIPPER WHO WAS FAMILIAR WITH MR M'ELROY TOLD HIM THAT HE WOULD
 17 BE TAKEN TO A4 SEG; SO MR M'ELROY COMPLIED WITH HIS ORDERS AND STOOD UP AND
 18 SUBMITTED TO RESTRAINTS "WITHOUT INCIDENT" (SEE EXHIBIT C et seq.).

19 AT APPROXIMATELY 16:10 HRS DEFENDANTS M. NERI AND D.F. JACKSON APPROACH
 20 MR M'ELROY, NOW SITTING COMELY IN A WHEELCHAIR. "... OFFICER NERI AND I ...
 21 BEGAN TO ESCORT HIM... ONCE WE APPROACHED THE FACILITY 3 PLAZA GATE M'ELROY
 22 BEGAN RESISTING AND YELLING 'I AM NOT GOING BACK TO THE YARD, I AM NOT GOING
 23 BACK.' OFFICER NERI AND I [L]IFTED M'ELROY HIGHER TO GAIN CONTROL..." (SEE
 24 EXHIBIT G, RVR # F3-08-03-013 [I.E. REPORT], STAFF WITNESS #3 at Pg 384). M'ELROY
 25 UNABLE TO GAIN ANY FOOTING BEGAN YELLING, WHILE THEY DANCED HIM ALONG,
 26 TILL HE LOST HIS FOOTING COMPLETELY; AND THE DEFENDANTS THEN DRAGGED
 27 HIM WHILE SCRAPING HIS KNEES ALL THE WAY ACROSS THE PLAZA TO FA3 SUPPORT
 28 OFFICE AS DEFENDANTS CAPTAIN ARLINE, LT BOSTON AND SGT SIMON FOLLOWED

1 TILL HE WAS DROPPED IN FRONT OF THE OFFICE DOOR (SEE EXHIBIT E, RVR # F3-
2 08-03-D13 et seq)

3 21. SOON AFTER MEDICAL ~~WERE~~ ^{WERE} STAFF ORDERED TO RETRIEVE A BEWILDERED
4 WIMPERING MARVIN FROM THE OFFICE DOORWAY, AND TO TAKE HIS VITALS INSIDE
5 THE MEDICAL BUILDING.

6 WHILE THE NURSE WAS TAKING HIS VITALS HE WAS GIVEN AN ORDER TO
7 STAND-UP. MCELROY STILL BLIND FROM THE PEPPER SPRAY, TRIPPED ON THE
8 WHEELCHAIR LEG REST AND STUMBLED FORWARD. THE DEFENDANTS TACKLED
9 HIM AND SHOVED THE ONCE EXPOSED PINS HOLDING TOGETHER HIS WRIST. ALL
10 THE WAY INTO THE BONE BENEATH HIS SKIN. MCELROY COULD DO NOTHING BUT
11 ~~WELL~~ CRY OUT IN PAIN "YOU BROKE MY WRIST!"

12 B. C/O'S HARRIS AND ROCHA'S FAILURE TO PROTECT
13 22. JANUARY 26, 2008 DEFENDANTS HARRIS AND ROCHA OBSERVED MCELROY
14 BEING ASSAULTED BY TWO OTHER INMATES IN THE BACK OF ASP-F4-HU420.

15 THEY ALLOWED THIS ATTACK TO MIGRATE ALL THE WAY TO THE
16 FRONT OF THE BUILDING BEFORE SOUNDING THE ALARM.

17 FURTHERMORE, THEY ALLOWED HIS ATTACKER TO GET AWAY; IN A
18 LOCKED BUILDING HOUSING APROX. 200 INMATES.

19 MR MCELROYS ATTACKER CALLED HIM A "CDP", AND IT IS UPON
20 INFORMATION AND BELIEF, AND THEREON ALLEGED, THAT HIS ATTACKERS
21 WERE REFERING TO THE AFORE MENTIONED "LETTER OF COMMENDATION" HE
22 RECIEVED FOR COMEING TO THE AIDE OF LIETENANT GIOTTONINI (SEE
23 EXHIBIT 'I', LETTER OF COMMENDATION (SEP '93)); (SEE ALSO EXHIBIT 'H', MCELROY
24 DECLARATION² AND RVR # F4-08-01-044)

25 C. FAILED ATTEMPTS OF RAISING MENTAL HEALTH ISSUES
26 23. THROUGHOUT THE YEARS, MR MCELROY HAS BEEN ^{GIVEN} SPECIAL HOUSING
27 CONSIDERATIONS FOR VARIOUS REASONS; MAINLY STRESS RELATED (SEE EXHIBIT
28 'J', GYM EXCLUSION CHRONO; EXHIBIT 'K', SINGLE CELL; SEE ALSO EXHIBIT 'L', SINGLE CELL).

1 MR. McELROY HAS A WELL DOCUMENTED HISTORY OF STRESS DISORDER
2 AND OF ANXIETY CAUSED BY HIS INCARCERATION (SEE EXHIBIT 'L' et seq.).

3 MR McELROY'S HOUSING ISSUES WEREN'T OF CONCERN WHILE AT MCSP.
4 HOWEVER UPON INFORMATION OF HIS TRANSFER TO ASP, HE IMMEDIATELY
5 RAISED HIS CONCERNS WITH MR. OLSON HIS PSYCHE CASEWORKER AT MCSP
6 AND ATTEMPTED TO POSTPONE HIS TRANSFER TILL HIS CHRONOS WERE
7 UPDATED; BUT HIS PROPERTY WAS PACKED IT WAS TOO LATE. FURTHERMORE HE
8 HAS SUFFERED A BROKEN LEG AS WELL, AFTER BEING ATTACKED FOR HIS
9 ASSISTANCE TO AN OFFICER (SEE EXHIBIT 'M' et seq.).

10 SINCE HIS ARRIVAL AT ASP HIS REQUEST TO DR OLSEN, AND OTHER ASP
11 PSYCHE TEAM DR(S), FOR REVIEW OF HIS PLACEMENT HERE, AND TO HAVE HIS
12 GYM EXCLUSION CHRONO UPDATED HAVE BEEN IGNORED. NOR DID THEY RAISE
13 THESE ISSUES AT HIS INITIAL CLASSIFICATION COMMITTEE HEARING AT ASP.

14 VI CLAIMS FOR RELIEF

15 A. FEDERAL CLAIMS FOR RELIEF

16 ① VIOLATION OF PRISONER'S EIGHTH AMENDMENT RIGHT TO 17 BE FREE FROM THE USE OF EXCESSIVE FORCE

18 24. PLAINTIFF REALLEGES AND INCORPORATES BY REFERENCE EACH
19 ALLEGATION OF PARAGRAPH 1 THROUGH 23, INCLUSIVE, AS IF ALLEGED HEREIN.

20 25. DEFENDANTS DEEGAN AND SIMON AND BOSTON VIOLATED MR McELROY'S
21 EIGHTH AMENDMENT RIGHT TO BE PROTECTED FROM CRUEL AND UNUSUAL
22 PUNISHMENT IN THE FORM OF EXCESSIVE FORCE, BY THEIR UNNECESSARY AND
23 WANTON INFLICTION OF PAIN, INCLUDING PHYSICAL INJURY AND PSYCHOLOGICAL AND
24 EMOTIONAL DISTRESS, AS HEREIN ALLEGED.

25 26. SPECIFICALLY, DEFENDANT, DEEGAN KNOWINGLY, MALICIOUSLY AND SADISTICALLY
26 INFLECTED PHYSICAL, EMOTIONAL, AND MENTAL ABUSE UPON MR. McELROY WHEN
27 HE GRABBED AND JERKED ON HIS BROKEN ARM/WRIST AND SPRAYED HIM TWICE
28 WITH PEPPER SPRAY AT POINT BLANK RANGE IN HIS FACE, IN FRONT OF

1 FEDERALLY PROTECTED RIGHTS.

2 31. AS A DIRECT AND PROXIMATE RESULT OF ALL OF THE DEFENDANTS ACTIONS
3 HEREIN ALLEGED, MARVIN MCELROY SUFFERED, AND CONTINUES TO SUFFER, PHYSICAL
4 INJURY. MARVIN MCELROY IS ENTITLED TO AN AWARD OF COMPENSATORY AND PUNITIVE
5 DAMAGES FOR INJURIES SUFFERED.

6 32 AS A DIRECT AND PROXIMATE RESULT OF ALL THE DEFENDANTS ACTIONS HEREIN
7 ALLEGED, MARVIN MCELROY SUFFERED, AND CONTINUES TO SUFFER, SEVERE EMOTIONAL
8 AND PSYCHOLOGICAL DISTRESS. MARVIN MCELROY IS ENTITLED TO AN AWARD OF
9 COMPENSATORY AND PUNITIVE DAMAGES FOR INJURIES SUFFERED.

10 33. MR MCELROY IS ENTITLED TO INJUNCTIVE RELIEF, INCLUDING, BUT NOT LIMITED TO,
11 AN ORDER REQUIRING HIS TRANSFER AWAY FROM A S P, WHERE HE WILL NOT BE SUBJECTED
12 TO RETALIATION INSTIGATED/RATIFIED BY ANY OF THE DEFENDANTS. THERE IS NO
13 ADEQUATE REMEDY AT LAW TO PROTECT MR MCELROY FROM SAID RETALIATION, AND
14 WITHOUT THE EQUATABLE RELIEF SOUGHT HE IS SUSCEPTIBLE TO GREAT INJURY.
15 THE BALANCE OF HARDSHIPS TIPS MARKEDLY TOWARD MARVIN MCELROY IN THAT THERE
16 WOULD BE LITTLE OR NO PREJUDICE OR HARM TO THE DEFENDANTS SHOULD MR.
17 MCELROY BE TRANSFERED AWAY ASP, BUT GREAT HARM TO MARVIN MCELROY SHOULD
18 HE BE REQUIRED TO STAY AT THAT INSTITUTION.

19 (2) VIOLATION OF PRISONER'S EIGHTH AMENDMENT RIGHT
20 TO BE FREE FROM THE USE OF EXCESSIVE FORCE

21 34. PLAINTIFF REALLEGES AND INCORPORATES BY REFERENCE EACH OF THE
22 GENERAL ALLEGATIONS OF PARAGRAPHS 1 THROUGH 23, INCLUSIVE, AND PARAGRAPHS
23 28 THROUGH 33, INCLUSIVE, OF THE FIRST CLAIM, AS IF ALLEGED HEREIN.

24 35. DEFENDANTS NERI, JACKSON, SIMON, BOSTON AND D. ARLINE VIOLATED MARVIN
25 MCELROY'S EIGHTH AMENDMENT RIGHT TO BE PROTECTED FROM CRUEL AND UNUSUAL
26 IN THE FORM OF EXCESSIVE FORCE, BY THEIR UNNECESSARY AND WANTON INFLICTION OF
27 PAIN, INCLUDING PHYSICAL INJURY AND PSYCHOLOGICAL AND EMOTIONAL DISTRESS, AS
28 HEREIN ALLEGED.

1 DEFENDANT SIMON. DEFENDANTS' ACTIONS/FAILURE TO ACT OFFENDS
2 CONTEMPORARY STANDARDS OF DECENCY.

3 27. PLAINTIFF IS INFORMED AND BELIEVES, AND THEREON ALLEGES, THAT
4 DEFENDANTS SIMON AND LT BOSTON, KNEW THAT DEFENDANT DEEGAN WAS
5 CAPABLE OF, AND LIKELY TO PERPETRATE SUCH OUTRAGEOUS ACT AS THE PEPPER
6 SPRAYING OF MR MCELROY AT POINT BLANK RANGE AND THE GRABBING OF HIS
7 BROKEN WRIST. PLAINTIFF FURTHER INFORMED AND BELIEVES, AND THEREON
8 ALLEGES, THAT DEFENDANT ~~DEEGAN~~^{SIMON} KNEW THAT SUCH CONDUCT WOULD BE
9 HARMFUL TO MR MCELROY OR ANY OTHER INMATE SUBJECT TO SUCH CONDUCT,
10 YET HE ALLOWED DEFENDANT TO REMAIN IN HIS POSITION OF AUTHORITY, AND
11 TO CARRY OUT THE OFFENSIVE BEHAVIOUR. IN DOING SO, DEFENDANT SGT SIMON
12 IMPLEMENTED A POLICY THAT REPUDIATED MARVIN MCELROYS CONSTITUTIONAL
13 RIGHTS AND WAS UNCONSCIONABLE. UNDER THE DOCTRINE OF SUPERVISORY
14 LIABILITY DEFENDANT SGT SIMON IS LIABLE FOR MARVIN MCELROYS INJURIES.

15 28. PLAINTIFF IS INFORMED AND BELIEVES, AND THEREON ALLEGES, THAT DEFENDANT
16 JAMES D. HARTLEY IS IN A POSITION OF AUTHORITY SUCH THAT HE COULD ARRANGE,
17 OR ORDER TO BE ARRANGED, A TRANSFER FOR MR MCELROY AWAY FROM A SP,
18 WHERE MR MCELROY IS SUBJECTED TO RETALIATION AND IS FEARFUL FOR HIS WELL-
19 BEING AND SAFETY. PLAINTIFF IS FURTHER INFORMED AND BELIEVES, AND THEREON
20 ALLEGES, THAT IN FACT DEFENDANT HARTLEY KNOWS OF MR MCELROYS REQUESTS
21 FOR TRANSFER, OF THE ALLEGED RETALIATION, AND OF MARVIN MCELROYS FEAR,
22 YET DEFENDANT HARTLEY HAS FAILED AND REFUSED TO FACILITATE MR MCELROYS
23 TRANSFER.

24 29. DEFENDANTS, ~~AND~~ EACH OF THEM, SUBJECTED MARVIN MCELROY TO THIS
25 PHYSICAL, EMOTIONAL, AND MENTAL ABUSE UNDER CIRCUMSTANCES WHICH DID NOT
26 REQUIRE THE USE OF PHYSICAL FORCE WHATSOEVER.

27 30. DEFENDANTS' ACTS, AS ALLEGED HEREIN, WERE DESPICABLE, KNOWING, WILLFUL,
28 MALICIOUS, AND/OR CARRIED OUT WITH RECKLESS DISREGARD FOR MARVIN MCELROYS

36. SPECIFICALLY, DEFENDANTS KNOWINGLY, MALICIOUSLY AND SADISTICALLY INFLECTED PHYSICAL, EMOTIONAL, AND MENTAL ABUSE UPON MARVIN M'ELROY WHEN THEY PAINFULLY DRAGGED HIM ACROSS FA3 PLAZA BY HIS BROKEN WRIST IN HAND-CUFFS. DEFENDANTS' ACTIONS OFFEND CONTEMPORARY STANDARDS OF DECENCY.

37. PLAINTIFF IS INFORMED AND BELIEVES, AND THEREON ALLEGES, THAT DEFENDANT(S) CAPTAIN D. ARLINE, LT. BOSTON, ~~AND~~ SGT G. SIMON, KNEW THAT DEFENDANT(S) NERI AND JACKSON WAS/IS CAPABLE OF, AND LIKELY TO PERPETRATE SUCH AN OUTRAGEOUS ACT AS DRAGGING MARVIN BY HIS BROKEN WRIST IN HAND-CUFFS ACROSS FA3 PLAZA. PLAINTIFF IS FURTHER INFORMED AND BELIEVES, AND THEREON ALLEGES, THAT DEFENDANT [C.]APTAIN D. ARLINE KNEW THAT SUCH CONDUCT WOULD BE HARMFUL TO MR M'ELROY OR ANY OTHER INMATE SUBJECTED TO SUCH CONDUCT, YET ALLOWED DEFENDANT(S) NERI AND JACKSON TO REMAIN IN THEIR POSITION OF AUTHORITY, AND TO CARRY OUT THE OFFENSIVE BEHAVIOR. IN DOING SO DEFENDANT CAPTAIN D. ARLINE IMPLEMENTED A POLICY THAT REPUDIATED MARVIN M'ELROY CONSTITUTIONAL RIGHTS AND WAS UNCONSCIONABLE. UNDER THE DOCTRINE OF SUPERVISORY LIABILITY DEFENDANT CAPTAIN D. ARLINE IS LIABLE FOR MARVIN M'ELROY'S INJURIES.

③ VIOLATION OF PRISONER'S EIGHTH AMENDMENT RIGHT TO BE FREE FROM THE USE OF EXCESSIVE FORCE

38. PLAINTIFF REALLEGES AND INCORPORATES BY REFERENCE EACH OF THE GENERAL ALLEGATIONS OF PARAGRAPHS 1 THROUGH 23, INCLUSIVE, AND PARAGRAPHS 28 THROUGH 33, INCLUSIVE, OF THE FIRST CLAIM, AS IF ALLEGED HEREIN.

39. DEFENDANT(S) NERI AND JACKSON VIOLATED MARVIN M'ELROY'S EIGHTH AMENDMENT RIGHT TO BE PROTECTED FROM CRUEL AND UNUSUAL PUNISHMENT IN THE FORM OF EXCESSIVE FORCE, BY THEIR UNNECESSARY AND WANTON INFLECTION OF PAIN, INCLUDING PHYSICAL INJURY AND PSYCHOLOGICAL AND EMOTIONAL DISTRESS, AS HEREIN ALLEGED

40. SPECIFICALLY, DEFENDANTS KNOWINGLY, MALICIOUSLY AND SADISTICALLY INFLECTED

1 PHYSICAL, EMOTIONAL, AND MENTAL ABUSE UPON MR M^CELROY WHEN THEY TACKLED HIM IN
 2 THE MEDICAL BUILDING AND PUSHED THE, ONCE EXPOSED, PINS, HOLDING HIS ~~WIST~~ BROKEN
 3 WRIST TOGETHER, ALL THE WAY INTO THE BONE BENEATH THE SKIN. DEFENDENTS'
 4 ACTIONS OFFEND CONTEMPORARY STANDARDS OF DECENCY.

5 41. PLAINTIFF IS INFORMED AND BELIEVES, AND THEREON ALLEGES, THAT DEFENDENT
 6 SIMON KNEW THAT DEFENDENTS NERI AND JACKSON WAS CAPABLE OF, AND LIKELY TO
 7 PERPETRATE SUCH AN OUTRAGEOUS ACT AS JUMPING ON/TACKLING A BLIND AND CRIPPLE
 8 MARVIN M^CELROY. PLAINTIFF IS FURTHER INFORMED AND BELIEVES, AND THEREON ALLEGES,
 9 THAT DEFENDANT SIMON KNEW THAT SUCH CONDUCT WOULD BE HARMFUL TO MARVIN OR
 10 ANY OTHER INMATE SUBJECTED TO SUCH CONDUCT, YET ALLOWED DEFENDENTS NERI
 11 JACKSON TO REMAIN IN THEIR POSITION OF AUTHORITY, AND TO CARRY OUT OFFENSIVE
 12 BEHAVIOR. IN DOING SO, DEFENDANT SIMON IMPLEMENTED A POLICY THAT REPUDIATED MARVIN'S
 13 CONSTITUTIONAL RIGHTS AND WAS UNCENSURABLE. UNDER THE DOCTRINE OF SUPERVISORY
 14 LIABILITY DEFENDANT SIMON IS LIABLE FOR MARVIN'S INJURIES.

15 ④ VIOLATION OF PRISONER'S EIGHTH AMENDMENT RIGHT
 16 TO BE PROTECTED FROM VIOLENCE BY OTHER PRISONERS

17 42. PLAINTIFF REALLEGES AND INCORPORATES BY REFERENCE EACH OF THE GENERAL
 18 ALLEGATIONS OF PARAGRAPHS 1 THROUGH 23, INCLUSIVE, AND PARAGRAPHS 28 THROUGH 33,
 19 INCLUSIVE, OF THE FIRST CLAIM, AS IF ALLEGED HEREIN.

20 43. DEFENDANTS HARRIS AND ROCHA VIOLATED MARVIN M^CELROY'S EIGHTH AMENDMENT
 21 RIGHT TO BE PROTECTED FROM VIOLENCE BY OTHER PRISONERS, BY FAILING TO
 22 RESPOND WHEN MARVIN WAS UNDER ATTACK THEY WERE/ARE DELIBERATELY
 23 INDIFFERENT TO MARVIN'S RIGHT TO BE FREE FROM CRUEL AND UNUSUAL PUNISHMENT
 24 AND HAS RESULTED IN SIGNIFICANT IRREPAIRABLE INJURY. SAID INJURY HAS INCLUDED,
 25 BUT NOT NECESSARILY BEEN LIMITED TO, A SECOND SURGERY, MULTIPLE TRIPS TO HOSPITAL
 26 TO HAVE CAST REPLACED BECAUSE OF CONTINUED SWELLING, PERMANENT LOSS OF RANGE
 27 OF MOTION/UNABLE TO BEND HAND BACK, AND VERY SEVERE PAIN. PLAINTIFF'S
 28 MEDICAL CONDITION ALSO SIGNIFICANTLY AFFECTS ACTIVITIES IN PRISON EACH/EVERY DAY.

44. PLAINTIFF IS INFORMED AND BELIEVES, AND THEREON ALLEGES, THAT DEFENDANTS HARRIS AND ROCHA ACTED INTENTIONALLY IN THE MANNER DESCRIBED ABOVE WITH KNOWLEDGE OF SUFFERING BY THE PLAINTIFF, AND OF THE RISK OF FURTHER SERIOUS INJURY AND HARM THAT RESULTED FROM THEIR ACTION OF REFUSING TO ACT.

45. AS A PROXIMATE RESULT OF DEFENDENT(S) HARRIS AND ROCHA'S CONDUCT, MARVIN HAS SUFFERED AND CONTINUES TO SUFFER GENERAL DAMAGES IN THE FORM OF SEVERE PAIN AND SUFFERING AND EMOTIONAL, MENTAL AND PSYCHOLOGICAL DISTRESS. PLAINTIFF IS INFORMED AND BELIEVES, AND THEREON ALLEGES, THAT HE WILL CONTINUE TO SUFFER SUCH DAMAGES IN THE FUTURE.

⑤ VIOLATION OF PRISONER'S EIGHTH AMENDMENT RIGHT TO PERSONAL SAFETY

46. PLAINTIFF REALLEGES AND INCORPORATES BY REFERENCE EACH OF THE GENERAL ALLEGATIONS OF PARAGRAPHS 1 THROUGH 45, INCLUSIVE, AS IF ALLEGED HEREIN.

47. DEFENDENT(S) HAVE DENIED MARVIN MCELROY HIS EIGHTH AMENDMENT RIGHT TO BE FREE FROM CRUEL AND UNUSUAL PUNISHMENT IN THE FORM OF DEPRIVATION OF PERSONAL SAFETY, THUS DENYING A BASIC HUMAN NEED GUARANTEED TO PRISONERS BY THE UNITED STATES CONSTITUTION.

48. IN DOING SO AS ALLEGED HEREIN ABOVE, DEFENDANT(S) ACTED WITH DELIBERATE INDIFFERENCE TO MARVIN'S PERSONAL SAFETY, AND SUBJECTED HIM TO UNNECESSARY AND WANTON INFLECTION OF PAIN, INCLUDING PHYSICAL INJURY AND PSYCHOLOGICAL AND EMOTIONAL DISTRESS, IN VIOLATION OF HIS RIGHTS UNDER THE EIGHTH AMENDMENT. SPECIFICALLY, DEFENDENT(S) WERE DELIBERATELY INDIFFERENT TO MARVIN MCELROY'S RIGHT TO HAVE PERSONAL SAFETY WHEN THEY INTENTIONALLY, KNOWINGLY, AND MALICIOUSLY INFLECTED PHYSICAL ABUSE AND HUMILIATION ON MARVIN BY GRABBING AND JERKING HIS BROKEN ARM/WRIST, PEPPER SPRAYING HIM, DRAGGING HIM ACROSS FA3 PLAZA BY HIS BROKE WRIST IN HANDCOFFS, TACKLEING HIM, WATCHING ^{HIM} BEING ASSAULTED BY TWO INMATES WHO BROKE MARVIN'S WRIST THAT DEFENDANT(S) HARRIS AND ROCHA LET GET AWAY, AND BY ASP OFFICIAL KNOWINGLY ~~LEAVE~~ HOUSED MR MCELROY UNDER CONDITIONS THAT, FOR HIM,

1 IMPOSE AN ATYPICAL AND SIGNIFICANT HARDSHIP IN RELATION TO THE ORDINARY
2 INCIDENTS OF PRISON LIFE, AND IS ALSO A VIOLATION OF HIS RIGHTS TO DUE PROCESS
3 UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

4 49. DEFENDENT(S) ACTED DESPICABLY, KNOWINGLY, WILLFULLY, AND MALICIOUSLY, OR
5 WITH RECKLESS OR CALLOUS DISREGARD FOR MR MCELROY'S FEDERALLY PROTECTED RIGHTS.

6 50. AS A DIRECT AND PROXIMATE RESULTS OF ALL OF THE DEFENDENT(S)' ACTIONS
7 HEREIN ALLEGED, MARVIN SUFFERED, AND CONTINUES TO SUFFER, PHYSICAL INJURY. MR MCELROY
8 IS ENTITLED TO AN AWARD OF COMPENSATORY AND ~~REPARATION~~ PUNITIVE DAMAGES FOR
9 INJURIES SUFFERED.

10 51. AS A DIRECT AND PROXIMATE RESULT OF THE DEFENDENT(S)' ACTIONS HEREIN
11 ALLEGED, MARVIN SUFFERED, AND CONTINUES TO SUFFER, SEVERE EMOTIONAL AND PSYCHOLOGICAL
12 DISTRESS. MR MCELROY IS ENTITLED TO AN AWARD OF COMPENSATORY AND PUNITIVE DAMAGES
13 FOR INJURIES SUFFERED.

14 52. MARVIN MCELROY IS ENTITLED TO INJUNCTIVE RELIEF, INCLUDING, BUT NOT LIMITED
15 TO, AN ORDER REQUIRING HIS TRANSFER AWAY FROM ASP, WHERE HE WILL NOT BE
16 SUBJECTED TO RETALIATION INSTIGATED/RATIFIED BY ANY OF THE DEFENDENT(S) THERE
17 IS NO ADEQUATE REMEDY AT LAW TO PROTECT MARVIN FROM SAID RETALIATION, AND
18 WITHOUT THE EQUITABLE RELIEF SOUGHT HE IS SUSCEPTIBLE TO GREAT IRREPARABLE
19 INJURY. THE HARM TO THE DEFENDENT(S) SHOULD MR MCELROY BE TRANSFERRED AWAY
20 FROM ASP, IS LITTLE OR NO PREJUDICE, BUT GREAT HARM TO MARVIN SHOULD HE BE
21 REQUIRED TO STAY AT THAT INSTITUTION.

22 (6) VIOLATION OF PRISONER'S FOURTEENTH AMENDMENT
23 RIGHT TO PROCEDURAL DUE PROCESS

24 53. PLAINTIFF REALLEGES AND INCORPORATES BY REFERENCE EACH ALLEGATION OF
25 PARAGRAPHS 1 THROUGH 52, INCLUSIVE, AS IF ALLEGED HEREIN.

26 54. DEFENDANT(S)/PRISON OFFICIALS HAVE DENIED MARVIN MCELROY HIS 14 AMEND.
27 RIGHTS, BY DEPRIVING PLAINTIFF OF HIS LIBERTY INTEREST WITHOUT DUE PROCESS.

28 55. IN DOING SO, AS ALLEGED HEREIN ABOVE, DEFENDANT(S) HAVE KNOWINGLY CAUSED

MARVIN PAIN, AS A RESULT OF DEFENDANT(S), DELIBERATE INDIFFERENCE FOR MR MCELROY'S 8TH AMEND. RIGHT TO BE FREE FROM CRUEL AND UNUSUAL PUNISHMENT, MARVIN HAS SUFFERED AND CONTINUES SUFFER IRREPARABLE INJURY AND EMOTIONAL, MENTAL AND PSYCHOLOGICAL DISTRESS, AS A DIRECT/INDIRECT RESULT OF THE DEFENDANT(S) ACTIONS OR FAILURE TO ACT, HAVE THUS FAR CAUSED MARVIN TO SUFFER AN "ATYPICAL AND SIGNIFICANT HARDSHIP IN RELATION TO THE ORDINARY INCIDENTS OF PRISON LIFE".

56. PLAINTIFF, HEREBY REALLEGES AND INCORPORATES BY REFERENCE EACH ALLEGATION OF PARAGRAPHS 49 THROUGH 52, INCLUSIVE, AS IF ALLEGED HEREIN.

B. STATE CLAIMS FOR RELIEF(/CAL. TORT CLAIMS)

① DEFENDANT(S)/OTHER PRISON OFFICIALS' WRONGFUL AND NEGLIGENT ACTS AND OMISSIONS HAVE CAUSED PLAINTIFF IRREPARABLE HARM AND INJURY

57. PLAINTIFF REALLEGES AND INCORPORATES BY REFERENCE EACH ALLEGATION IN A GENERAL WAY OF PARAGRAPHS 1 THROUGH 23, INCLUSIVE, AS IF ALLEGED HEREIN.

58. PLAINTIFF HAS FILED A COMPLAINT WITH THE BOARD OF CONTROL THAT WAS REJECTED; THAT ADDRESSED THE ISSUES RAISED HEREIN THIS COMPLAINT,

58. AS A RESULT OF THE DEFENDANT(S) WRONGFULLY NEGLIGENT ACTS AND OMISSIONS MARVIN MCELROY HAS SUFFERED AND CONTINUES TO SUFFER IRREPARABLE INJURY.

59. PLAINTIFF REALLEGES AND INCORPORATES BY REFERENCE EACH ALLEGATION OF PARAGRAPHS 49 THROUGH 52, INCLUSIVE, AS IF ALLEGED HEREIN.

VII PLEADING REQUIREMENTS (F.R.Civ.P. 26)

60. ALL OF THE ABOVE STATED FACTS/CLAIMS, HAVE BEEN "PLED WITH 'PARTICULARITY' AS REQUIRED" BY RULE 26.

VIII PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, MARVIN MCELROY PRAYS FOR JUDGEMENT AGAINST DEFENDANTS AS FOLLOWS:

1. DECLARATORY RELIEF; DECLARE EACH PARTYS' RIGHTS AND LIABILITIES;
2. INJUNCTIVE RELIEF; IN THE FORM PROPER CLASSIFICATION/ HOUSING PLACEMENT THAT FACTORS IN AND CONSIDERS PLAINTIFFS HEALTH/IMPAIRED MOBILITY/PSYCHIATRIC CONDITION AND 'SAFETY' CONCERNS;
3. COMPENSATORY DAMAGES, OF \$120,000⁰⁰ FOR:
 - a. \$ 20,000⁰⁰ FOR IRREPARABLE HARM/INJURY SUFFERED AS RESULT OF DEFENDANTS ACTION/INACTION AS DESCRIBED ABOVE.
 - b. \$10,000⁰⁰ FOR EACH DEFENDANT NAMED HEREIN ABOVE;
4. PUNITIVE DAMAGES, OF \$1,000,000⁰⁰ FOR THE MALICIOUS AND SADISTIC ACT PLAINTIFF WAS SUBJECTED TO BY SAID DEFENDANTS;
5. NOMINAL DAMAGES AS DECIDED AT TRIAL;
6. REASONABLE ATTORNEY'S FEES PURSUANT TO 42 USC §1988;
7. COST OF SUIT; AND
8. SUCH FURTHER RELIEF THIS COURT DEEMS PROPER.

DEMAND FOR JURY TRIAL

PLAINTIFF, MARVIN M'ELROY HEREBY DEMANDS A TRIAL BY JURY.

DATED: MARCH 29, 2008

RESPECTFULLY SUBMITTED

BY: Marvin McElroy
MARVIN M'ELROY

VII VERIFICATION

I, MARVIN M'ELROY, STATE:
I AM THE PLAINTIFF IN THE CIVIL COMPLAINT. I HAVE READ THE FOREGOING COMPLAINT AND THE FACTS STATED THEREIN ARE TRUE OF MY OWN KNOWLEDGE, EXCEPT AS TO MATTERS THAT ARE THEREIN STATED UPON INFORMATION AND BELIEF, AND AS TO THOSE MATTERS I BELIEVE THEM TO BE TRUE.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.
EXECUTED AT AVAL AT KINGS COUNTY OF CALIFORNIA ON MAY 29 2008.

Marvin McElroy
MARVIN M'ELROY

MARVIN MCELROY, C73869
AVENAL SP
PO BOX 8
AVENAL, CA 93204

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MARVIN MCELROY,
Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION,
DIRECTOR OF CORRECTIONS, W.D. GAUSEWITZ, et al.,
AVENAL STATE PRISON, et al.,
JAMES D. HARTLEY, WARDEN.
Defendants

ORDER TO SHOW CAUSE FOR A
PRELIMINARY INJUNCTION AND A
TEMPORARY RESTRAINING ORDER
AND MEMORANDUM OF LAW AND
DECLARATIONS SUBMITTED HERewith
IN SUPPORT OF
Civil Action No _____

UPON THE COMPLAINT, THE SUPPORTING DECLARATIONS OF PLAINTIFF, AND THE
MEMORANDUM OF LAW SUBMITTED HERewith, IT IS:

ORDERED THAT DEFENDANTS WILLIAM GAUSEWITZ, DIRECTOR OF CORRECTIONS
AND JAMES D. HARTLEY, WARDEN OF AVENAL STATE PRISON SHOW CAUSE IN
ROOM _____ OF THE UNITED STATES COURTHOUSE AT, _____
ON THE _____ DAY OF _____, 2008, AT _____
O'CLOCK, WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE PURSUANT TO
RULE 65(a) OF THE FEDERAL RULES OF CIVIL PROCEDURE ENJOINING THE

1 DEFENDANTS, THEIR SUCCESSOR IN OFFICE, AGENTS AND EMPLOYEES AND ALL
2 OTHER PERSONS ACTING IN CONCERT AND PARTICIPATION WITH, FROM/TO:

- 3 1. TRANSFER PLAINTIFF AWAY FROM ASP, TO A NONDORMITORY INSTITUTION;
- 4 2. CALL TO HEARING/REVIEW PLAINTIFF'S CURRENT CLASSIFICATION
5 SCORE AND JUST HIS HOUSING PLACEMENT TO MEET THE LEVEL OF SECURITY
6 REQUIRED TO MAINTAIN HIS HEALTH AND SAFETY.
- 7 3. REVIEW ALL PERTINENT DOCUMENTS /FILES NECESSARY TO THE SAFE
8 KEEPING AND WELLBEING OF PLAINTIFF, AND ANY OTHER DECISIONS AFFECTING
9 HIS WELFARE/HOUSING PLACEMENT

10 IT IS FURTHER ORDERED THAT EFFECTIVE IMMEDIATELY, AND PENDING
11 THE HEARING AND DETERMINATION OF THIS ORDER TO SHOW CAUSE, THE
12 DEFENDANTS W. GADSEWITZ AND J.D. HARTLEY AND EACH OF THEIR OFFICERS,
13 AGENTS, EMPLOYEES, AND ALL PERSONS ACTING IN CONCERT OR PARTICIPATION
14 WITH THEM, ARE RESTRAINED FROM:

- 15 4. PHYSICALLY ABUSING PLAINTIFF/ USING EXCESSIVE FORCE;
- 16 5. ANY FURTHER VERBAL/MENTAL/EMOTIONAL/PSYCHOLOGICAL ABUSE;
- 17 6. ARBITRARY, CAPRICIOUS/ANY IRRATIONAL CLASSIFICATION OF PLAINTIFF;
- 18 7. HOUSING PLAINTIFF IN GYMS /DORMITORY HOUSING UNITS;
- 19 8. DEPRIVING PLAINTIFF WITH PERSONS DEFINED UNDER 15 CCR §3141; AND
- 20 9. ANY OTHER ACTION THAT MAY OBSTRUCT PLAINTIFF'S ACCESS TO THE COURTS
21 INCLUDING THE ERRONIOUS SCREEN OUTS OF GRIEVANCES, THAT SUBSEQUENTLY HAS
22 EFFECT/AFFECT OF PREVENTING INMATES FROM EXHAUSTING ADMINISTRATIVE
23 REMEDIES.

24 IT IS FURTHER ORDERED THAT THE ORDER TO SHOW CAUSE, AND ALL OTHER
25 PAPERS ATTACHED TO THIS APPLICATION BE SERVED ON THE AFORESAID PLAINTIFF BY
26 JUNE 27, 2008.

27 _____
28 DATED: _____
UNITED STATES DISTRICT JUDGE

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ORDER
TO SHOW CAUSE FOR A PRELIMINARY INJUNCTION AND FOR A
TEMPORARY RESTRAINING ORDER

I. PRISON OFFICIALS VIOLATED THE 8TH AMENDMENT BY
DEPRIVING PLAINTIFF OF HIS RIGHT TO PERSONAL SAFETY
AND TO BE FREE FROM CRUEL AND UNUSUAL PUNISHMENT

1. IN EVALUATING A CLAIM OF CRUEL AND USUAL PUNISHMENT, A COURT FIRST
ASK WHETHER THE DEPRIVATION WAS SUFFICIENTLY SERIOUS. WILSON V. SEITER
(1991) 501 U.S. 294 [111 S. CT. 2321; 115 L. ED. 2D 271]. THIS OBJECTIVE COMPONENT
REQUIRES A DEPRIVATION OF "LIFE'S MINIMAL CIVILIZED MEASURES OF LIFE'S NECESSITIES."

HUDSON V. McMILLAN (1992) 503 U.S. 119 [112 S. CT. 995; 117 L. ED. 2D 156] (CITING
RHODES V. CHAPMAN (1981) 452 U.S. 337, 347 [101 S. CT. 2392; 69 L. ED. 2D 59])

2. PERSONAL SAFETY IS ONE OF LIFE'S NECESSITIES. HOPTOWIT V. RAY (9TH CIR. 1982)
682 F.2D 1237, 1246. WHETHER A CONDITION OR INJURY VIOLATES CONTEMPORARY
STANDARDS OF DECENCY WILL VARY FROM SITUATION TO SITUATION. A TRANSFER MIGHT
SUBJECT A PRISONER TO CRUEL AND UNUSUAL PUNISHMENT IF THE PRISONER WOULD
BE PLACED WITH KNOWN ENMIES [OR OTHERS WHO WOULD CAUSE SERIOUS HARM. SEE
FARMER V. BRENNAN (1994) 511 U.S. 825 [114 S. CT. 1970; 128 L. ED. 2D 811] (PRISON OFFICIALS
HAVE DUTY TO PROTECT PRISONERS FROM VIOLENCE AT THE HANDS OF OTHER PRISONERS
; A CONSTITUTIONAL VIOLATION OCCURS WHEN THE DANGER OF HARM IS "SUFFICIENTLY
SERIOUS" AND THE PRISON OFFICIALS ACT WITH "DELIBERATE INDIFFERENCE" TO
INMATE'S HEALTH OR SAFETY).

3. THE PLAINTIFF HAS BEEN PLACED WITH THOSE WHO CAUSED HIM SERIOUS HARM (SEE
EXHIBIT 'H') IN DOING SO PRISON OFFICIALS HAVE NEGLECTED TO PERFORM THEIR DUTY AND
PROTECT THE PLAINTIFF AND ARE DELIBERATELY INDIFFERENT TO THE FUTURE RISK
OF FUTURE HARM THE PLAINTIFF IS FACING. WHILE THE PLAINTIFF HAS RAISED HIS
CONCERNS, PRISON OFFICIALS HAVE FAILED TO PROTECT HIM, EVEN THOUGH THEY HAVE
HAD, AND CONTINUE TO HAVE THE ABILITY TO DO SO. IN THE PLAINTIFF'S RECENTLY FILED
ADMINISTRATIVE APPEAL RAISING "LIFE AND SAFETY CONCERNS" (SEE EXHIBIT 'P')

1 ASP-M-08-01308, denied, SGT ~~PHILAN~~ STATED at [APPEAL RESPONSE] "... IF YOU HAD BEEN ABLE
2 TO IDENTIFY THESE INMATES AT THE TIME OF THIS ALLEGED INCIDENT APPROPRIATE
3 STEPS WOULD BE IN PLACE SO AS NOT JEOPARDIZE YOUR SAFETY...").

4 IT IS NOT THE PLAINTIFFS JOB TO PROTECT HIMSELF NOR ANY ONE ELSE/INMATES.
5 PLAINTIFF, 59 WEARS GLASSES, ALLEGES THAT HE TRIED TO IDENTIFY HIS ATTACKERS,
6 WHO ATTACKED HIM WITHOUT WARNING, BUT COULD NOT; THOUGH DID IDENTIFY RAYMOND
7 MARTINEZ (SEE McELROY DECLARATION #2 at [PARAGRAPH 2]) WHO HAD PREVIOUSLY TRIED TO
8 ECSTORT COLOR PENCILS FROM PLAINTIFF (MARTINEZ KNOWS ABOUT PLAINTIFF'S 'LETTER
9 OF COMMENDATION' FOR HELPING A "COP"); THEY LIVED IN THE SAME HOUSING UNIT.
10 PLAINTIFF ALSO ALLEGES HE WAS DENIED A CHANCE TO IDENTIFY (BY PHOTO LINEUP) THE
11 WITNESSES, WHO WERE TAKEN ~~ESTED~~ INTO CUSTODY AT THE TIME OF THE
12 INCIDENT, NOR WAS HE PERMITTED TO CALL FORTH ALL THOSE INMATES (SEE EXHIBIT 'P'
13 at [PG 15] RVR # F4-08-01-044) WHO WERE IN THE AREA OF THE INCIDENT, TO HELP
14 IDENTIFY HIS ATTACKERS. FURTHERMORE ALL OF PLAINTIFF'S ENEMY CONCERNS, HAVE
15 BEEN/ARE BECAUSE PLAINTIFF IN 1993 "RESCUED" A CORRECTIONAL OFFICER WHO WAS
16 BEING VICIOUSLY ATTACKED BY ANOTHER INMATE. INMATES WHO PROBABLY ^{WOULD} TAKE HIS
17 LIFE IF THEY FOUND OUT, THAT PLAINTIFF ALSO "SNITCHED" (/RAT); CONSIDERING
18 THE DEFENDANTS / OTHER PRISON OFFICIALS FAILURE TO RESPOND REASONABLE TO
19 THE PLAINTIFFS SAFETY AND ENEMY CONCERNS.

20 4. A CONDITION WHICH HAS NOT CAUSED ANY PRESENT INJURY MAY STILL VIOLATE THE
21 8TH AMENDMENT IF IT THERE IS "IMMINENT DANGER," AND THE CONDITION IS VERY LIKELY
22 TO CAUSE "SERIOUS ILLNESS AND NEEDLESS SUFFERING." HELLING V. MCKINNEY (1993) 529
23 U.S. 25 [113 S. CT. 2475; 125 L. ED. 2D 28] (INMATE EXPOSURE TO CIGARETTE SMOKING); WALLIS V.
24 BALDWIN (9TH CIR. 1995) 70 F. 3D 1074 (REQUIRING INMATES TO CLEAN ATTIC WHEN JAILERS
25 KNEW OR SUSPECTED PRESENCE OF ABESTOS COULD VIOLATE 8TH AMENDMENT).

26 THE PLAINTIFF HAS DEMONSTRATED HE IS IN "IMMINENT **DANGER**" AND THAT HE HAS
27 NEEDLESSLY SUFFERED AND HE CONTINUES TO SUFFER PAIN CAUSED THE ATTACKS OF INMATES
28 AND FROM THE ABUSE/USE OF EXCESSIVE FORCE BY THE DEFENDANTS AND FROM THE

1 DEFENDANTS' NEGLIGENCE TO PROPERLY TRAIN THEIR STAFF. PLAINTIFF IS ALSO
 2 SUFFERING SERIOUS ILLNESS, POST TRAUMATIC STRESS DISORDER, AS A RESULT OF THE
 3 DEFENDANTS' AND PRISON OFFICIALS' ACTIONS/FAILURE TO ACT/REASONABLY RESPOND TO
 4 PLAINTIFF'S SAFETY CONCERNS AND NEEDS.

5 5. IN DETERMINING WHETHER A PARTICULAR CONDITION IS CONTRARY TO CIVILIZED
 6 STANDARDS OF DECENCY, COURTS CAN CONSIDER THE OPINIONS OF EXPERTS, BUT SUCH OPINIONS
 7 WILL NOT ORDINARILY ESTABLISH CONSTITUTIONAL STANDARDS. ACCORDING TO THE NINTH
 8 CIRCUIT COURTS OF APPEALS, WHAT THE GENERAL PUBLIC WOULD THINK ABOUT A
 9 PARTICULAR CONDITION IS MORE IMPORTANT THAN EXPERT OPINION. HOPTOWITZ V. RAY (9TH
 10 CIR. 1982) 682 F.2D 1237; *see also* KEENAN V. HALL (9TH CIR. 1996) 83 F.3D 1083 (DISCUSSING
 11 NUMEROUS CONDITIONS ISSUES THAT CAN RAISE EIGHTH AMENDMENT CONCERNS).

12 6. THE SECOND COMPONENT REQUIRES A CONSIDERATION OF PRISON OFFICIALS STATE OF
 13 MIND IN RELATION TO THE SITUATION BEING ADDRESSED. IS PRISON OFFICIALS CONDUCT WANTON?
 14 STANDARD IS WHETHER AN OFFICIAL ACTED WANTONLY DEPENDS ON THE NATURE OF THE
 15 PRISONER'S CLAIM. "WANTON" IN GENERAL PRISON CONDITIONS CASES MEANS ACTING WITH "
 16 DELIBERATE INDIFFERENCE." A PRISON OFFICIAL ACTS WITH DELIBERATE INDIFFERENCE IF HE
 17 OR SHE KNOWS OF AND DISREGARDS AN INHUMANE CONDITION OR ACTION THAT CONSTITUTES AN
 18 EXCESSIVE RISK TO INMATE HEALTH AND SAFETY.

19 THE FINAL POLICY MAKER(S) HAS READ/REVIEWED THE PLAINTIFF'S CENTRAL FILE, AND
 20 IS AWARE OF THE EXCESSIVE RISK TO PLAINTIFF, AND THE NAMED SUPERVISORY OFFICIALS/OTHER
 21 PRISON OFFICIALS AND PERSONNEL OBSERVED THE HARMFUL CONDUCT/EXCESSIVE USE OF
 22 FORCE, ATTACKS FROM OTHER INMATES AND FAILED TO PROTECT PLAINTIFF, AND ARE AWARE OF
 23 THE PLAINTIFFS FRAGILE PSYCHOLOGICAL WELLBEING/HEALTH WHICH IS DIRECTLY AFFECTED
 24 BY THE CONDITIONS OF HIS CONFINEMENT.

25 7. IN THIS REGARD, A PRISON OFFICIAL "WOULD NOT ESCAPE LIABILITY IF THE EVIDENCE SHOWED THAT
 26 HE MERELY REFUSED TO VERIFY UNDERLYING FACTS THAT HE STRONGLY SUSPECTED TO BE TRUE,
 27 DECLINED TO CONFIRM INFERENCES OF RISK THAT HE STRONGLY SUSPECTED TO EXIST." *FARMER V.*
 28 *BRENNAN* (1994) 511 U.S. 825, 842-843 [114 S.Ct. 1970; 128 L.Ed. 2D 811]; *see also* *Id.* at FN.8.

II PRISON OFFICIALS/OFFICERS FAILURE TO REASONABLY RESPOND TO, AND PROTECT PLAINTIFF FROM ASSAULT BY OTHER INMATES, VIOLATED PLAINTIFF'S 8TH AMENDMENT RIGHT, UNDER THE FEDERAL CONSTITUTION, TO BE **FREE** FROM CRUEL AND UNUSUAL PUNISHMENT

8. PRISONERS HAVE A RIGHT UNDER THE 8TH AMENDMENT OF THE FEDERAL CONSTITUTION TO BE REASONABLY PROTECTED FROM CONSTANT THREAT OF VIOLENCE AND SEXUAL ASSAULT BY FELLOW PRISONERS, AND HE/SHE NEED NOT WAIT UNTIL AN ASSAULT OCCURS TO OBTAIN RELIEF. *FARMER V. BRENNAN* (1974) 511 U.S. 825 [114 S. CT 1970; 128 L. ED. 2D 811]; *NOLL V. CARLSON* (9TH CIR. 1987) 809 F. 2D 1446; *see also BERG V. KINCHELO* (9TH CIR. 1986) 799 F. 2D 457, 459 (CLAIM BASED ON THREAT OF SUFFICIENT).

THE PLAINTIFF HAS A WELL DOCUMENTED HISTORY OF ENEMY CONCERNS, DATEING BACK TO 1993 (*see* EXHIBITS 'Iii' AND 'Oii'). THE PLAINTIFF'S MOST RECENT ATTACK, SUFFERED, ALSO, DEMONSTRATES THAT, THIS SELFLESS ACT, OF SAVING LT. GIDTONINI JULY 6, 1993, IS STILL CONSTRUED BY THE GENERAL PRISON POPULATION, EVEN ON 'SNY' YARDS, TO BE AN UNFORGIVABLE GESTURE/ACT. THE ATTACK[S], HE HAS THUS FAR SUFFERED, BECAUSE OF SAID ACT, HAVE LEFT HIM WITH [T]WO [I]RRREPARABLE INJURIES. HE WILL NEVER BE ABLE TO RUN AGAIN AND THE LOSS OF MOBILITY/ABILITY TO USE HIS RIGHT HAND/WRIST/ARM, GREATLY REDUCES HIS QUALITY OF LIFE AND, IMPAIRS HIS ABILITY TO PERFORM LIFE'S MOST BASIC FUNCTIONS; LIKE TYEING HIS SHOES OR SIGNING HIS NAME.

HE HAS SUFFERED FAR MORE THAN A SIMPLE THREAT; HOWEVER THE NEXT INCIDENT WILL PROBLY TAKE HIS LIFE.

9. WHILE MERE NEGLIGENCE ON THE PART OF PRISON OFFICIALS IS INSUFFICIENT TO SUPPORT A CONSTITUTIONAL CLAIM; THEIR ACTIONS IN FAILING TO PROTECT A PRISONER MUST AMOUNT TO DELIBERATE INDIFFERENCE TO THE [P]RISONERS NEED. *DAVID V. CANNEN* (1986) 474 U.S. 344 [106 S. CT. 628,

88 L.ED. 2D 677]; FARMER V. BRENNAN (1974) 511 U.S. 825 [114 S. CT. 1970; 128 L. ED. 2D 810];
 BERG V. KINCHELOE (9TH CIR. 1998) 794 F. 2D 457; HARRIS V. ROBERTS (N.D. CAL. 1989) 719
 F. SUPP. 879; LEER V. MURPHY (9TH CIR. 1988) 844 F. 2D 628, 633; REDMAN V. COUNTY OF
 SAN DIEGO (9TH CIR. 1991) 942 F. 2D 1435.

PRIOR TO THE ATTACK, PLAINTIFF SUFFERED IN 2002, HE HAD GONE TO PRISON
 OFFICIALS AND INFORMED THEM THAT HIS CELLIE DID NOT WANT HIM AS A CELLY;
 BECAUSE OF THEIR FAILURE TO RESPOND REASONABLY, TO HIS GRIVANCE/COMPLAINT,
 HIS NOW UNABLE TO RUN; JUST LIKE TODAY, THE DEFENDANTS JUST STOOD THERE
 WITH CALLOS INDIFFERENCE WATCHING A 59 YEAR OLD, ELDERLY MAN, BEING BRUTILY
 ATTACKED AND BEATEN BY TWO INMATES WHO BROKE HIS WRIST AND GOT AWAY.

IT'S THIS VERY SYSTEMIC PATTERN OF FAILING TO REASONABLY RESPOND TO
 VOICED CONCERNS/VISIBLY APPERANT SITUATIONS/CIRCUMSTANCES/INCIDENTS THAT
 HAS CHANGED THE PLAINTIFFS LIFE; AS HE ONCE KNEW IT.

10. PRISON OFFICIAL'S KNOWLEDGE OF SUBSTANTIAL RISK TO INMATES SAFETY, FOR
 PURPOSE OF INMATES CLAIM THAT OFFICIAL VIOLATED 8TH AMENDMENT BY FAILING TO
 PROTECT
 INMATE, IS QUESTION OF FACT AND CAN BE PROVEN BY CIRCUMSTANTIAL EVIDENCE; SEE
 HAMILTON V. LEAVY, 117 F. 3D 742 (1997). "WHILE NOT EVERY INDURY SUFFERED BY ONE
 PRISONER AT THE HANDS OF ANOTHER TRANSLATES INTO 8TH AMENDMENT LIABILIT FOR
 PRISON OFFICIALS RESPONSIBLE FOR VICTIM'S SAFETY BEING VIOLENTLY ASSAULTED IN PRISON
 IS SIMPLY NOT PART OF PENALTY THAT CRIMINAL OFFENDERS PAY FOR THEIR OFFENSES.
 SOCIETY AND PRISON OFFICIALS DELIBERATE INDIFFERENCE TO SUBSTANTIAL RISK OF
 SERIOUS HARM TO INMATE THUS VIOLATES 8TH AMENDMENT PROHIBITION, ON CRUEL AND
 UNUSUAL PUNISHMENT; FARMER V. BRENNAN, 511 U.S. 825, 833, 114 S. CT. 1970, 1976, 128 L. ED.
 2D 811 (1994) (QUOTING CORTES-QUINONES V. JIMENEZ-NETTLES, 842 F. 2D 556, 558
 (1ST CIR. 1988)); (SEE ALSO RHODES V. CHAPMAN, 482 U.S. 337, 345, 101 S. CT.
 2392, 2398, 69 L. ED. 2D 59 (1981)).

III DEFENDANTS USE OF EXCESSIVE FORCE VIOLATED PLAINTIFF'S 8TH AMENDMENT RIGHT TO BE FREE FROM CRUEL AND UNUSUAL PUNISHMENT

II. PRISONERS HAVE AN ABSOLUTE RIGHT, GAURANTEED BY THE 8TH AMEND. TO ~~THE~~ U.S. CONSTITUTION, TO BE FREE FROM CRUEL AND UNUSUAL PUNISHMENT, SEE U.S. CONSTITUTION, 8TH AMEND. ("EXCESSIVE... CRUEL AND UNUSUAL PUNISHMENT INFLICTED."); SEE ALSO CALIFORNIA CONSTITUTION, ARTICLE 1, § 17. UNLIKE OTHER FEDERAL CONSTITUTIONAL RIGHTS, WHICH MUST BE BALANCED AGAINST SECURITY AND OTHER CONCERNS WHEN APPLIED TO PRISONERS, VIOLATIONS OF THE 8TH AMEND. CAN NEVER BE JUSTIFIED. "THE EIGHTH AMENDMENT IS NOT A 'MAYBE' OR 'SOMETIMES' PROPOSITION. TOUSSAINT V. MCCARTHY (9TH CIR. 1986) 801 F.2D 1080, CERT DENIED, 107 S. CT. 2462 (1987)

A GARD'S USE OF EXCESSIVE FORCE AGAINST A PRISONER CAN VIOLATE THE 8TH AMEND. IN EXCESSIVE FORCE CASES, THE COURT MUST DETERMINE WHETHER THE FORCE WAS APPLIED "IN GOOD FAITH TO MAINTAIN OR RESTORE DISCIPLINE, OR MALICIOUSLY OR SADISTICALLY TO CAUSE HARM." HUDSON V. McMILLAN, 503 U.S. 1, 6, 112 S. CT. 995, 998, 117 L. ED. 2D 156 (1992); WHITLEY V. ALBUR (1986) 475 U.S. 312 [106 S. CT. 1078; 89 L. ED. 2D 251]; GALT V. SONN (9TH CIR. 1987) 815 F.2D 923; ROBINSON V. MEECHAM (9TH CIR. 1991) 939 F.2D 699, 701-702. "EXCESSIVE FORCE" IS ANY PHYSICAL CONTACT BY A GARD THAT IS MEANT TO CAUSE HARM, RATHER THAN TO KEEP ORDER.

12. TO DECIDE WHAT FORCE IS EXCESSIVE, JUDGES CONSIDER:

a. THE NEED FOR FORCE? NONE;

13. THE PLAINTIFF IS A 59 YEAR OLD, 150 LB. ELDERLY MAN FEARING FOR HIS LIFE, BECAUSE HE WAS UNABLE TO DEFEND HIMSELF; BECAUSE HIS WRIST WAS BROKEN (WITH PINS STICKING OUT) BY TWO ATTACKERS, PRISON OFFICIALS FAILED TO CATCH AND ~~END~~ THEY CAN BE ON EITHER YARD. FURTHERMORE THE PLAINTIFF [O]NLY BEGGED AND PLEADED NOT TO GO TO THE YARD BECAUSE OF ENEMY CONCERNS (SEE UPSHAW DECLARATION). PLAINTIFF HAS ALSO

ONLY RECEIVED THREE RULE VIOLATIONS, A LETTER OF COMMENDATION AND POSITIVE PSYCHE REPORTS IN THE LAST [25] YEARS! SEE ATTACHED DECS..

b. WHETHER THE AMOUNT OF FORCE USED WAS REASONABLE GIVE THE NEED?

14. PLAINTIFF HAS A WELL DOCUMENT HISTORY OF ANXIETY/STRESS RELATE DISORDERS. HOWEVER THAT IS NO EXCUSE FOR DEFENDENT T. DEEGAN TO GRAB AND COJERK THE PLAINTIFFS BROKEN ARM/WRIST THEN SPRAY HIM WITH PEPPER SPRAY. THE PLAINTIFF WAS FROZEN IN TERROR "HUGGING" THE BENCH. DEFENDENTS COULD HAVE CALLED A PSYCHE TO REASON WITH HIM

c. HOW SERIOUS THE NEED FOR FORCE APPEARED TO THE GUARDS?

15. DEFENDANT BOSTON CALLED THE ASSOCIATE WARDEN, THE DEFENDANT ORDERED DEFENDANT SGT SIMON TO PREPARE FOR A CELL EXTRACTION, AND TO INFORM THE PLAINTIFF (CELL EXTRACTION ARE VIDEO TAPED (NORMALLY)) IF DEFENDANT T. DEEGAN BELIEVED THE PLAINTIFF TO BE A SERIOUS THREAT; HE MORE THAN LIKELY WOULD HAVE WAITED FOR THE EXTRACTION TEAM, AS OPPOSED TO POKING AND PRODDING THE SCARED, CRIPPLED CAGED ANIMAL.

d. WHETHER THE GUARDS MADE EFFORTS TO USE AS LITTLE FORCE A NECESSARY?

16. IS THERE ANY JUSTIFICATION FOR PULLING ON A MANS BROKEN ARM AND PEPPER SPRAYING AT POINT BLANK RANGE?

e. HOW BADLY YOU WERE HURT?

17. THE DEFENDANTS AWARE OF HIS BROKEN WRIST WILLFULLY AND WANTONLY WITH MALICIOUS SADISTIC INTENT, JERKED HIS BROKEN WRIST, PEPPER SPRAYED HIM THEN DRAGGED HIM ACROSS THE PLAZA IN HANDCUFFS BY HIS BROKEN WRIST AS HE SCREAMED IN PAIN ~~AND~~ SUFFERED. THEN TACKLED HIM AND CAUSED THE PINS HOLDING HIS WRIST TOGETHER TO BE SHOVED ALTHEWAY INTO THE BONE. PLAINTIFF ALSO NOW SUFFERS FROM POST TRAUMATIC STRESS DISORDER AND LOSS OF MOBILITY IN WRIST.

18 THE DEFENDANT(S) ACTIONS/REFUSAL TO ACT HAVE DIRECTLY/INDIRECTLY CAUSED MR M'ELROY TO NEEDLESSLY SUFFER, AND HE CONTINUES TO; THE DEFENDANT(S) DELIBERATELY/CALLOUS INDIFFERENCE TO THIS UNREASONABLE RISK OF, FUTURE RISK OF,

1 FUTURE RISK OF SERIOUS HARM, IS IN VIOLATION OF THE 8TH AMENDMENT. FOR
 2 THIS REASON, PLAINTIFF HUMBLY REQUEST THAT THIS HONORABLE COURT GRANT THIS
 3 ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION AND A TEMPORARY RESTRAINING
 4 ORDER.

5 DATED: MAY 29, 2008

6 Marvin McElroy
 7 MARVIN MCELROY, C 73869

8
 9 IV VERIFICATION

10 I, MARVIN MCELROY, STATE:

11 I AM THE PLAINTIFF IN THE ABOVE STATED MATTERS. I HAVE READ THE
 12 FOREGOING COMPLAINT, ORDER TO SHOW CAUSE AND MEMORANDUM OF POINT AND
 13 AUTHORITIES AND THE FACTS STATED THEREIN ARE TRUE OF MY OWN KNOWLEDGE,
 14 EXCEPT AS TO MATTERS THAT ARE THEREIN STATED ON MY INFORMATION AND
 15 BELIEF, AND AS TO THOSE MATTERS I BELIEVE THEM TO BE TRUE.

16 I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE
 17 AND CORRECT. EXECUTED AT AVAL AT KINGS COUNTY OF CALIFORNIA ON MAY 29,
 18 2008.

19 RESPECTFULLY SUBMITTED

20 Marvin McElroy
 21 ~~Marvin McElroy~~ MARVIN MCELROY

1 UNITED STATES DISTRICT COURT
 2 FOR THE
 3 NORTHERN DISTRICT OF CALIFORNIA
 4

5
 6 MARVIN M'ELROY,
 Plaintiff,

7
 8 v.

9 CALIFORNIA DEPARTMENT OF
 10 CORRECTIONS AND REHABILITATIONS
 11 JAMES D. HARTLEY, WARDEN
 AVAL STATE PRISON, et al.,

DECLARATION IN SUPPORT OF
 APPLICATION FOR PRELIMINARY
 INJUNCTION AND TEMPORARY
 RESTRAINING ORDER BY

MARVIN M'ELROY

Civil Action No. _____

12 DECLARATION UNDER PENALTY OF PERJURY BY MARVIN M'ELROY

13 I, MARVIN M'ELROY, BEING COMPETENT TO MAKE THIS DECLARATION AND
 14 HAVING PERSONAL KNOWLEDGE OF THE MATTERS STATED HEREIN, DECLARES
 15 PURSUANT TO 28 USC §1746:

- 16 1. I, PLAINTIFF, MARVIN M'ELROY, SUFFERED AND I CONTINUE TO SUFFER
 17 IRREPARABLE PHYSICAL INJURY, AND I CONTINUE TO SUFFER, SEVERE EMOTIONAL
 18 AND PSYCHOLOGICAL DISTRESS.
- 19 a. JULY 6, 1993 AT DVSP MARVIN M'ELROY RESCUED LT. GIOTTONINI WHO
 20 WAS BEING ASSAULTED BY ANOTHER INMATE (SEE EXHIBIT 'I'). PRISON
 21 OFFICIALS LATER TRANSFERRED MR M'ELROY TO MCSF, AFTER LEARNING
 22 THE BLACKS AND WHITE WERE ORCHESTRATING A 'HIT' ON HIM.
- 23 b. MR M'ELROY, A LIFER, WAS HOUSED IN A LIFER HOUSING UNIT WHERE THE
 24 INCIDENT TOOK PLACE, MARVIN BELIEVES THESE LIFERS CALLED THE HIT.
- 25 c. IN 2002 AT MCSF HE SUFFERED A BROKEN KNEE, AFTER HIS CELLY HAD
 26 LEARNED THAT ^{HE} HELPED A 'COP' (SEE EXHIBIT 'O') HE CAN ENJOY RUN AGAIN.
- 27 d. JANUARY 26, 2005 AT ASP's-HU 42D, HIS WRIST WAS BROKEN BY TWO INMATES
 28 WHO LEARNED HE HELPED A 'COP'. THEY CALLED MARVIN A "COP" BEFORE

THEY ATTACKED HIM. HE CAN NO LONGER BEND HIS WRIST BACK; THEREBY EVEN FURTHER LIMITING THE EXERCISE HE CAN DO (see EXHIBIT 'N').

2. FURTHERMORE HIS ATTACKERS ARE STILL AT LARGE AT ASP 3/4 YARDS.

2. PLAINTIFF HAS TRIED TO NOTIFY DEFENDANT(S) THAT HE IS APPLYING FOR A TEMPORARY RESTRAINING ORDER/PRELIMINARY INJUNCTION; BUT ASP PERSONNEL HAVE DENIED HIM AND OTHER INMATES THEIR RIGHT TO CONFIDENTIALLY CORRESPOND WITH PRISON OFFICIALS AS DEFINED BY AND AFFORDED INMATES UNDER THEIR OWN IS CCR § 3141.

a. MAY 19 PLAINTIFF TRIED TO SERVE NOTICE ON THE DIRECTOR OF CORRECTIONS BUT IT WAS RETURNED WITH PART OF THE ADDRESS [REDACTED] (see EXHIBIT 'Q').

b. HE HAS ALSO TRIED TO SERVE NOTICE ON ASP'S WARDEN HARTLEY, HARTLEY HAS NOT REPLIED/RESPONDED.

c. PLAINTIFF UPON INFORMATION AND BELIEVES, AND THEREON ALLEGES, THAT THE DEFENDANT(S) EMPLOYEES AND COWORKERS, ONGOING, ILLEGAL PRACTICES ARE PURPOSELY DONE TO ASP'S INMATES TO DISCOURAGE INMATES FROM EXERCISING THEIR 1ST AMENDMENT CONSTITUTIONAL RIGHT (see WALTON DECLARATION #2)

3. THERE IS NO ~~SAND~~ ADEQUATE REMEDY AT LAW TO PROTECT MR M'ELROY FROM SAID RETALIATION, AND WITHOUT THE EQUATABLE RELIEF SOUGHT HE IS SUSCEPTIBLE TO EVEN FURTHER GREAT IRREPARABLE INJURY. MONEY DAMAGES WILL NOT FIX HIS INJURIES.

4. FURTHERMORE PLAINTIFF IS LIKELY TO SUCCEED AT TRIAL; AND A PRELIMINARY INJUNCTION/RESTRAINING ORDER WILL SERVE THE PUBLIC INTEREST.

I DECLARE UNDER PENALTY ^{OF PERJURY} THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED AT AVAL AT KINGS COUNTY OF CALIFORNIA ON MAY 29, 2008

Marvin McElroy
MARVIN M'ELROY

1 UNITED STATES DISTRICT COURT
 2 FOR THE
 3 NORTHERN DISTRICT OF CALIFORNIA

4
 5
 6 MARVIN M^cELROY,
 Plaintiff,

7
 8 v.

9 AVENAL STATE PRISON et al.,
 10 JAMES D. HARTLEY, WARDEN,
 Defendant(s).

DECLARATION IN SUPPORT OF
 REQUEST FOR PRELIMINARY
 INJUNCTION BY

MARVIN M^cELROY, CDC# C73869

Civil Action No. _____

11
 12 DECLARATION UNDER PENALTY OF PERJURY OF MARVIN M^cELROY

13 I, MARVIN M^cELROY, BEING COMPETENT TO MAKE THIS DECLARATION AND
 14 HAVEING PERSONAL KNOWLEDGE OF THE MATTERS STATED HEREIN DECLARES
 15 PURSUANT TO 28 USC §1746:

16 1. NOV. 21, 2008, I WAS TRANSFERED TO ASP FROM MCSP. WHEN I ARRIVED AT
 17 ASP'S 'R-N-R', MYSELF AND THE OTHER INMATES WERE GIVEN OUR PROPERTY AND
 18 NEW STATE CLOTHES. NEXT SGT DOE AND TWO OTHER OFFICERS, ONE WAS CID
 19 LOPEZ (MS), TOOK US TO A CLASSROOM AND GAVE US A SPEECH! ON HOW TO PROGRAM
 20 AT ASP. MS. LOPEZ SAID, THAT THERE IS, ONLY TWO SNY (3 AND 4) YARDS; AND IF YOU
 21 OWE SOMEONE/YOU ARE IN DEBT(?) 'PAY-UP'! BECAUSE! THE WORD WOULD GET BACK,
 22 TO THE OTHER YARD, ABOUT YOU! AFTER THAT SPEECH, ON RULES! WE WERE TAKEN TO
 23 OUR NEW HOUSING UNIT. FOR ME IT WAS 42D.

24 2. AFTER A FEW DAYS IN 42D, I SAW RAYMOND MARTINEZ, AN INMATE FROM MCSP. WE
 25 BOTH WAS ON THE SAME YARD 'B' (AT MCSP) AND WE STARTED TO TALK, AND HE BROUGHT-
 26 UP, THAT HE KNEW ABOUT "THE GOOD GUY CHRONO" (LETTER OF COMMENDATION) AND WE
 27 HAD PROBLEMS, BECAUSE, HE WANTED ME TO GET SOME COLOR PENCILS IN MY FIRST AND
 28 ONLY PACKAGE! THE PACKAGE CAME TO ME, BUT WITH WRITING PAPER AND NO COLOR PENCILS.

1 SO WE FELL OUT, OVER THAT AND STOP SPEAKING TO EACH OTHER.

2 3. AROUND NOV/DEC '07, I WAS DUCETED TO SEE PSYCHE DR. OLSEN! WHEN I TOLD HIM
3 ABOUT MY "GYM [E]XCLUSION CARDNO" THAT I HAD, FROM MCSP AND I ASKED IF HE WOULD
4 CALL THERE AND TALK WITH "MR. OLSEN". HE SAID YES. LATER I WAS DUCETED TWO MORE
5 TIMES TO SEE ANOTHER (PSYCHE) AND A WOMEN. I TOLD THEM THE SAME STORY ABOUT
6 MY EXCLUSION CARDNO.

7 4. JAN. 26, 2008 10AM I HEARD SAY[CDP] TO ME, AND THEN, I WAS ATTACKED BY TWO
8 INMATES. THE TWO OFFICERS (HARRIS AND RDCHA) ALLOWED THEM TO GET AWAY! AND NOT
9 KNOW WHO THEY ARE/WEHE? AFTER THE ATTACK ON ME, I WAS FINISHED!

10 5. I WAS TRANSFERED TO FRESNO HISPITAL, WITH A BROKEN WRIST!

11 6. I RETURNED BACK TO PRISON, THAT SAME DAY, BUT 8 PM TO O.H.U. PHARMACY
12 WERE TWO OFFICERS, WERE WAITING ONE OF THEM WAS MS. LOPEZ SHE GAVE ME MY
13 LOCK-UP PAPERS AND PROPERTY LIST PAPER. LATER THAT NIGHT I WAS REHOUSED IN AD SEG.

14 7. MARCH 6, 2008 I WENT TO COMMITTEE HEARING TO FA3, I TOLD COMMITTEE
15 MEMBERS OF ENEMY CONCERNS. THEY BELIEVED I DIDNT HAVE ANY! OVER ON 3 YARD.

16 8. MARCH 9, 2008 I LEFT AD-SEG AND WALKED TO FA3, WHERE I SAW TWO MORE ENEMYS.

17 9. I TOLD THE LT., HE TOLD STAFF TO TAKE ME TO CLINIC FOR 72HR REPORT, AND THAT
18 WAS DONE SGT SIMON TOLD HIS STAFF ABOUT TO ORDER ME TO SIT ON THE BENCH OUTSIDE,
19 FOR AWHILE. TWO HOURS LATER SGT SIMON ASKED ME TO GO TO THE GYM. I REFUSED ON
20 ENEMY CONCERNS! SO HE! SAID TO ME, I DONT CARE, IF YOU STAY, ALL NIGHT OUT HERE. SO
21 AFTER THAT, I LEFT THE BENCH, AND STARTED TO WALK THE YARD, ALL THE TIME, BEING
22 FOLLOWED BY STAFF. I THEN WALKED TO ANOTHER HOUSING UNIT, THEN SGT SIMON TOLD HIS
23 STAFF MEMBERS TO PLACE HANDCUFFS ON ME, AND TAKE ME TO THE PROGRAM OFFICE. I
24 WAS THEN PLACED IN THE MENTAL WARD TILL ABOUT MARCH 11/12/13, 2008. A SGT CAME TO
25 INTERVIEW ME, ON MY, ENEMY CONCERN ON 3 YARD.

26 10. MARCH 14, 2008 ANOTHER SGT CAME TO VISIT ME, AND TOLD ME, THAT I WAS GOING
27 BACK TO AD SEG NOT 3 YARD!. SO I LEFT THE MENTAL WARD, WITH SGT TO BE PLACED
28 IN THE O.H.U PHARMACY, HOLDING CELL.

11. THEN I MET C/D DEEGAN!

I DECLARE UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE
AND CORRECT. EXECUTED AT AVENAL AT KINGS COUNTY OF CALIFORNIA ON MAY 29
2008.

Marvin McElroy
MARVIN M'ELROY

1 UNITED STATES DISTRICT COURT
 2 FOR THE
 3 NORTHERN DISTRICT OF CALIFORNIA
 4
 5

6 MARVIN M^CELROY,
 Plaintiff

7
 8 v.

9 CALIFORNIA DEPARTMENT OF
 10 CORRECTIONS AND REHABILITATION
 11 JAMES D. HARTLEY, WARDEN
 12 AVENAL STATE PRISON, et al.,
 Defendant(s)

DECLARATION IN SUPPORT OF
 APPLICATION FOR PRELIMINARY
 INJUNCTION AND TEMPORARY
 RESTRAINING ORDER BY
 MARVIN M^CELROY

Civil Action No. _____

13 DECLARATION UNDER PENALTY OF PERJURY BY MARVIN M^CELROY

14 I, MARVIN M^CELROY, BE COMPETENT TO MAKE THIS DECLARATION AND HAVING
 15 KNOWLEDGE OF THE MATTERS STATED HEREIN, DECLARES PURSUANT TO 28 USC
 16 § 1746:

17 1. MAY 15, 2008 WHILE I WAS IN MY CELL, C/O FUGUNDES CAME TO THE DOOR
 18 AND HE ASKED ME IF, I WAS TO HAVE CANTEEN TODAY? I SAID NO. THEN ~~HE~~ I
 19 SAID I HAVE NO MONEY. THEN ^{HE} TOOK MY CELLY OUT OF OUR CELL, SO HE COULD PICKUP
 20 THE LEGAL DOCUMENTS OUT OF HIS TWO BOXES, OF HIS PROPERTY (SEE WALTON DECL. #1)
 21 C/O FUGUNDES BROUGHT INMATE C. WALTON BACK TO THE CELL, C/O HASKEL, WAS
 22 GIVING ME MY CANTEEN THROUGH THE FOOD HOLE IN THE DOOR. FUGUNDES SAID, TO ME. I
 23 THOUGHT, YOU SAID, YOU DIDNT HAVE ANY MONEY? I RESPONDED BY SAYING THAT, "I GET ALL
 24 MY MONEY, FROM [M]s. GREEN." THE C/O FUGUNDES LEFT MY DOOR.
 25 2. THEN IN 3 MINUTE, C/O FUGUNDES WAS BACK AT MY CELL DOOR AND SAID TO ME THE
 26 CAPTAIN WANTED TO SEE ME, SO PUT HANDCUFFS ON ME AND BROUGHT ME TO THE
 27 LT. DUVALL OFFICE, WHERE I STOOD IN THE MIDDLE OF C/O FUGUNDES AND LT DUVALL
 28 AND [N]URSE GREEN.

3, THEN C/O FUGONDESS STARTED ANSWERING (?ASKING) ME QUESTIONS ABOUT WHERE I GET MY MONEY FROM, AND DID I SAY THAT [N]URSE GREEN GAVE ME MONEY FOR MY CANTEEN? I RESPONDED TO C/O FUGONDES QUESTIONS IN FRONT OF THE LT. DUVALL AND NURSE GREEN, BY SAYING TO THEM, [N]URSE GREEN HAVE NEVER GAVE ME ANY MONEY OR NEVER PUT MONEY ON MY BOOKS, AND I SAID THAT MY FAMILY GIVES ME MONEY, AND I SAID C/O FUGONDESS IS TRYING TO SET-ME-UP!! BECAUSE MY CHARGES WAS DROPPED (see EXHIBIT 'Piii') AND C/O, DEFENDANT, T. DEEGAN WAS HIS FRIEND. THEN C/O FUGONDESS SAID WHAT IF I BRING YOUR CELLY WALTON IN HERE? I SAY, TO THAT QUESTION, YOU C/O FUGONDESS JUST HAD MY CELLY IN THE SHOWER (RETURNING HIS PROPERTY). I DONT KNOW IF YOU THREATENED HIM OR NOT, SO BRING HIM AND WE'LL SEE. SO THE LT. ASK ME, IM I CALLING HIS OFFICER A LIE. I ANSWER BY SAYING THAT C/O FUGONDES MADE A MISTAKE. SO LT TOLD THE C/O FUGONDESS TO GET ME OUT OF HIS OFFICE.

4. SO THE C/O FUGONDESS TOOK ME BACK TO MY CELL, AND ON THE WAY THE C/O FUGONDES STARTED TO BEND MY RIGHT WRIST (THE ONE THAT WAS BROKE. see EXHIBIT 'N'), UNTIL IT STARTED TO HURT ME, AND ALSO BEND IT MORE, WHILE TAKING OFF THE HANDCUFFS, THAT I YELL OUT IN PAIN, TO HIM, YOU ARE HURTING MY WRIST. HE JUST SAID TO ME, "YOU JUST WET YOUR PANTS!" (see WALTON DECLARATION #1).

I DECLARE UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED AT AVAL AT KINGS COUNTY OF CALIFORNIA ON MAY 29, 2008.

Marvin McElroy
MARVIN McELROY

1 UNITED STATES DISTRICT COURT
 2 FOR THE
 3 NORTHERN DISTRICT OF CALIFORNIA

4
 5
 6 MARVIN MCELROY
 Plaintiff

7
 8 v

9 AVENAL STATE PRISON, et al.,

10 JAMES D. HARTLEY,
 Defendants

DECLARATION IN SUPPORT OF
 APPLICATION FOR PRELIMINARY
 INJUNCTION AND A TEMPORARY
 RESTRAINING ORDER BY
 JOHN W. UPSHAW, CDC# V39102
 Civil Action No. _____

11
 12
 13 DECLARATION UNDER PENALTY OF PERJURY BY JOHN WILLIAM UPSHAW

14 I, JOHN UPSHAW, BEING COMPETENT TO MAKE THIS DECLARATION AND HAVING
 15 PERSONAL KNOWLEDGE OF THE MATTERS STATED HEREIN, DECLARES PURSUANT 28 USC § 1746:

- 16 1. 3/14/08 I WAS AT BLD 39D IN HOLDING CELL #2. I HEARD INMATE MCELROY IN CELL #1
 17 CRYING OUT IN PAIN AND FEAR AND TELLING THE C/O'S HE COULD NOT RETURN TO 3 YARD.
 18 THE C/O'S KEPT SAYING THAT "YOU ARE GOING WHETHER YOU LIKE OR NOT", AND THEN I HEARD
 19 A CAN BEING SPRAYED (I THINK IT WAS MACE) AND MCELROY CRYING IN PAIN.
 20 2. AT WHICH POINT THAT C/O CAME OUT OF MCELROY'S CELL #1 AND TOLD THE OFFICER
 21 MONITORING ME TO GET ME OUT OF THERE, AND RETURN ME TO AD-SEG.

22
 23
 24 I DECLARE UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS
 25 TRUE AND CORRECT. EXECUTED AT AVENAL AT KINGS COUNTY OF CALIFORNIA ON
 26 MAY 29, 2008.

27
 28 
 UPSHAW, CDC# V39102

1 UNITED STATES DISTRICT COURT
 2 FOR THE
 3 NORTHERN DISTRICT OF CALIFORNIA

4
 5
 6 MARVIN MCELROY,
 7 Plaintiff,

8 v.

9 AVENAL STATE PRISON et al.,
 10 JAMES D HARTLEY, WARDEN,
 11 Defendant(s),

Civil Action No. _____

DECLARATION IN SUPPORT OF
 REQUEST FOR PRELIMINARY
 INJUNCTION ~~BY~~
 CHARLES WALTON, CDC#F48589,
 PURSUANT 28 USC § 1746

12 DECLARATION UNDER PENALTY OF PERJURY OF CHARLES WALTON

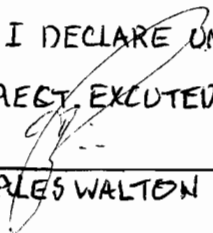
13 I, CHARLES WALTON, BEING COMPETENT TO MAKE THIS DECLARATION AND
 14 HAVING PERSONAL KNOWLEDGE OF THE MATTERS STATED HEREIN DECLARES
 15 PURSUANT TO 28 USC § 1746:

16 1. MAY 15, 2008 APPROXIMATELY NOON AT ASP H.U. 140-1-14 AFTER C/O
 17 FAGUNDUS BROUGHT/PUT ME BACK IN MY CELL AFTER ISSUING MY
 18 PROPERTY; THEN HE LEFT AFTER ASKING MARVIN ABOUT HIS SISTER.

19 2. A FEW MINUTES LATER HE RETURNED AND COFFED MARVIN AND
 20 TOOK HIM TO THE SERGEANTS OFFICE BY THE SALLY-PORT.

21 3. ON THE WAY BACK I COULD SEE HIM PULLING MR MCELROY'S RIST
 22 AS HE PLEADED HIM SAYING, "PLEASE MY ARM". HE SHOVED MR MCELROY
 23 BACK IN THE CELL AND SAID, "YOU MESSED YOUR PANTS 'BDY'!"; THEN
 24 BENT HIS WRIST AGAIN WHILE UNCOFFING THROUGH TRAY SLOT WHILE
 25 AT ME.

26 I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND
 27 CORRECT EXCUTED AT AVENAL AT KING'S COUNTY OF CALIFORNIA ON MAY 29, 2008.

28 
 CHARLES WALTON

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MARVIN MCELROY,
Plaintiff,

v.

AVENAL STATE PRISON, et al.,

JAMES D. HARTLEY, (A) WARDEN,

Defendants.

Civil Action No. _____

DECLARATION IN SUPPORT OF
APPLICATION FOR ORDER TO
SHOW CAUSE FOR A
PRELIMINARY INJUNCTION AND A
TEMPORARY RESTRAINING ORDER
BY

CHARLES WALTON, F48589

DECLARATION UNDER PENALTY OF PERJURY BY CHARLES WALTON

I, CHARLES WALTON, BEING COMPETENT TO MAKE THIS DECLARATION AND
HAVING PERSONAL KNOWLEDGE OF THE MATTERS STATED HEREIN, DECLARES
PURSUANT TO 28 USC § 1746:

1. THAT ASP PERSONNEL AND OFFICIALS WORK IN CONCERT AT HINDERING INMATES,
ACCESS TO THE COURT/ABILITY TO EFFECTIVELY AND ADEQUATELY LITIGATE ACTION
IN COURT, ONCE INITIATED.
2. ASP STAFF/PERSONNEL DENY INMATES THEIR RIGHT TO CONFIDENTIAL
CORRESPONDENCE UNDER 15 COR § 341. THEREBY MAKING IT NEARLY IMPOSSIBLE TO
SERVE ANY NOTICE ON THE DEFENDANTS THAT THE COURTS MAY REQUIRE AS
PART OF RULES OF PROCEDURE, THEREBY CAUSING AN INMATE CASE TO BE DISMISSED
FOR FAILING TO SATISFY SOME TECHNICAL REQUIREMENT.
3. I HAVE PERSONALLY BEEN DENIED CONFIDENTIAL CORRESPONDENCE ON SEVERAL
OCCASSIONS.
4. 1/17/08 ASP HQ 350 C/D SADOAC READ MY OUTGOING LEGAL MAIL VIOLATING

1 DP #009, AND HE ALSO GAVE LEGAL ADVISE, AS TO ^{WHO} I CAN WRITE AND HOW TO
2 ADDRESS MY LEGAL MAIL.

3 5. 1/21/08 C/O SADAC READ LEGAL MAIL AGAIN THIS TIME C/O GOODSON WATCH HIM.

4 6. 1/22/08 C/O SANDAVOL WENT THROUGH MY LEGAL PROPERTY. THE INMATES
5 ASSIGNED TO DORM 19'S BOOKS 32L, 32M AND 34L WITNESSED HER.

6 7. 1/29/08 C/O PERKINS ATTEMPTED TO DISCOURAGE ME FROM SENDING LEGAL
7 MAIL, ASKING/MAKING "WHO ARE YOU WINNING TO", "YOU GOT A LOT OF LEGAL MAIL".

8 8. 2/17/08 ASP HU 320 C/O'S PATTY AND WOLF TRIED TO PREVENT ME FROM
9 CORRESPONDING ~~WITH PRISON~~ CONFIDENTIALLY WITH PRISON OFFICIALS

10 9. 3/6/08 GABRIELA RESINDEZ CAUSED CV-07-05580-SBA TO BE DISMISSED
11 WITHHOLDING NEED CERTIFIED TRUST STATEMENT.

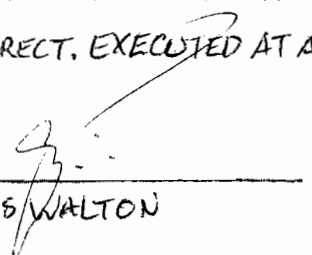
12 10. 4/29/08 ASP HU 140 C/O OLSEN HE WAS GIVEN "ORDERS" THAT INMATES ARE
13 NOT ALLOWED CONFIDENTIAL CORRESPONDENCE WITH CAPTAIN ARLINE NOR ANY OTHER
14 PRISON OFFICIALS.

15 11. 4/30/08 HU 140 C/O DOE REFUSED TO ALLOW CONFIDENTIAL CORRESPONDENCE
16 WITH THE CAPTAIN.

17 12. 5/14/08 HU 140 C/O M. BASS WHILE COLLECTING LEGAL MAIL ASK WHY
18 DO WE SEND SO MUCH LEGAL MAIL AND THAT INMATES AREN'T ALLOWED TO
19 CONFIDENTIALLY CORRESPOND WITH "CDC STAFF/OFFICERS".

20 13. 5/15/08 HU 140 M. BASS REFUSED TO ALLOW THE PLAINTIFF, MR MCELREY,
21 TO CORRESPOND CONFIDENTIALLY WITH A CDC OFFICER.

22 I, DECLARE UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE
23 AND CORRECT, EXECUTED AT AUCALAT KINGS COUNTY OF CALIFORNIA ON MAY 29, 2008.

24
25 
26 CHARLES WALTON
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